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PAPER

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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* MICHAEL K. AU,  
CONAN MING Y. CHAN,  
SAU CHU CHAN,  
LEV MIRLAS, and  
ALEX SHUM

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Appeal 2009-012763  
Application 10/751,742  
Technology Center 3600

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Before HUBERT C. LORIN, ANTON W. FETTING, and  
JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

## STATEMENT OF THE CASE

Michael K. Au, et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1-20. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

## SUMMARY OF DECISION

We AFFIRM-IN-PART.<sup>2</sup>

## THE INVENTION

The invention is an “online marketplace for multiple buyers and suppliers. Specification 3:2-3.

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A method of creating a marketplace with hosted supplier stores comprising the steps of:  
    providing tools for creating and managing a hosted supplier store to each of a plurality of suppliers through a commerce site, said tools including a catalog facility for uploading and managing a supplier catalog for said hosted supplier store;  
    receiving a plurality of supplier catalogs from said plurality of suppliers;  
    aggregating said plurality of supplier catalogs into an aggregated catalog; and

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<sup>2</sup> Our decision will make reference to the Appellants’ Appeal Brief (“App. Br.,” filed Feb. 6, 2008) and Reply Brief (“Reply Br.,” filed Nov. 30, 2008), and the Examiner’s Answer (“Answer,” mailed Oct. 1, 2008).

providing a buyer with access to said aggregated catalog and separate access to at least one of said plurality of supplier catalogs on said commerce site.

### THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

|        |                    |               |
|--------|--------------------|---------------|
| Flaxer | US 2003/0033218 A1 | Feb. 13, 2003 |
| Haynes | US 2006/0218052 A1 | Sep. 28, 2006 |

The following rejections are before us for review:

1. Claims 1-3, 6-9, 12-15, and 18-19 are rejected under 35 U.S.C. §102(e) as being anticipated by Haynes.
2. Claims 4-5, 10-11, 16-17, and 20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Haynes and Flaxer.

### ISSUES

The issue is whether claims 1, 6-7, 12-13, and 18-19 are anticipated under 35 U.S.C. § 102(e) by Haynes. Specifically, the major issue is whether Haynes describes: 1) receiving a plurality of supplier catalogs from said plurality of suppliers and aggregating said plurality of supplier catalogs into an aggregated catalog and 2) providing a buyer with access to said aggregated catalog and separate access to at least one of said plurality of supplier catalogs on said commerce site. The rejection of claims 4-5, 10-11, 16-17, and 20 under 35 U.S.C. §103(a) as being unpatentable over Haynes and Flaxer also turn on this issue.

The second issue is whether claims 2, 8, and 14 are anticipated under 35 U.S.C. § 102(e) by Haynes. Specifically, the issue is whether the

Examiner has established that Haynes describes “providing a supplier hub catalog topology” and “wherein said step of aggregating includes aggregating said supplier catalog according to said supplier hub catalog topology.”

The third issue is whether claims 3, 9, and 15 are anticipated under 35 U.S.C. § 102(e) by Haynes. Specifically, the issue is whether the Examiner has established that Haynes describes that “said buyer accesses said aggregated catalog through one of said hosted supplier stores owned by one of said suppliers.”

The fourth issue is whether claim 6 is anticipated under 35 U.S.C. § 102(e) by Haynes. Specifically, the issue is whether Haynes describes “developing requests for quotations for made-to-order items.”

## PRINCIPLES OF LAW

### *Claim Construction*

During examination of a patent application, a pending claim is given the broadest reasonable construction consistent with the specification and should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

[W]e look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation. As this court has discussed, this methodology produces claims with only justifiable breadth. *In re Yamamoto*, 740 F.2d 1569, 1571 (Fed. Cir. 1984). Further, as applicants may amend claims to narrow their scope, a broad construction during prosecution creates no

unfairness to the applicant or patentee. *Am. Acad.*,  
367 F.3d at 1364.

*In re ICON Health and Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007).  
Limitations appearing in the specification but not recited in the claim are not  
read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364,  
1369 (Fed. Cir. 2003).

#### *Anticipation*

“A claim is anticipated only if each and every element as set forth in  
the claim is found, either expressly or inherently described, in a single prior  
art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628,  
631 (Fed. Cir. 1987).

### FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are  
supported by at least a preponderance of the evidence. *Ethicon, Inc. v.*  
*Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general  
evidentiary standard for proceedings before the Office).

#### *Claim construction*

1. The Specification does not include an express definition of  
aggregating or aggregated.
2. A definition of the verb aggregate is “to collect or gather into a  
mass or a whole.” (See *Merriam-Webster’s Collegiate Dictionary*  
23 (10<sup>th</sup> Ed. 1998.)
3. A definition of the adjective aggregate is “formed by the collection  
of units or particles into a body, mass, or amount” or “taking all  
units as a whole.” (See *Merriam-Webster’s Collegiate Dictionary*  
23 (10<sup>th</sup> Ed. 1998.)

*Haynes*

4. Haynes describes a system that includes a searchable database that stores catalogs and that is connected to a plurality of buyers and suppliers. Haynes [0017] and [0018].
5. Haynes' paragraph [0050] describes that "[a]lso included are all of the catalogues for each of the suppliers" in data warehouse 36. *See also* Haynes [0048] and [0052].
6. Haynes' paragraph [0056] states:

In operation, the catalogue of each of the suppliers may be stored in a memory or database of it's terminal 14. Though not shown in FIG. 1, the external system 28 may be coupled to a terminal 14 of a selected supplier, whereby its catalogue of products and/or services may be downloaded to the system 10 an, in particular, applied to the server 46, which in turn transmits such data via the database server 34 to the data warehouse 36, where the product and/or services catalogue of the suppliers are stored.
7. Haynes' Figure 1 is a diagram of the arrangement of servers and databases of the system in Haynes. Haynes [0028].
8. Haynes' paragraph [0089] describes a supplier assigning a category or relationship to an item, which can then be searched for in the catalog by the category or relationship. *See also* Fig. 6G.
9. Haynes' paragraph [0048] describes a buyer accessing buyer site 22a provided by a web server 20 of the system 100.
10. Haynes' paragraph [0049] describes a vendor accessing system 100 via the vendor site 22b.
11. Paragraph [0059] of Haynes states: "If the buyer hits a "Request for Proposal" button 223d, the buyer causes a message describing a

particular product to be transmitted to selected suppliers with a request for bid from each of those designated suppliers for the particular product.”

12. Haynes also describes that the products can be customized, such as with select trademarks or logos. *See* Haynes [0095] – [0102].

### ANALYSIS

*The rejection of claims 1-3, 6-9, 12-15, and 18-19 under 35 U.S.C. §102(e) as being anticipated by Haynes.*

*Claims 1, 7, 12, 13, 18 and 19*

The Appellants argued claims 1, 7, 12, 13, 18 and 19 as a group (*See* App. Br. 5-15). We select claim 1 as the representative claim for this group, and the remaining claims 7, 12, 13, 18 and 19 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii) (2009).

Initially, we note that the Appellants make a general argument that the Examiner has not established a prima facie showing of anticipation. App. Br. 5-10 and Reply Br. 2. However, as to claim 1, we find that the Examiner has shown that every element is either inherently or expressly described in Haynes and therefore, has established a prima facie showing of anticipation. *See* Answer 3-4.

Now, we turn to the Appellants’ specific arguments. The Appellants argue that Haynes does not describe: 1) receiving a plurality of supplier catalogs from the plurality of suppliers and aggregating the plurality of supplier catalogs into an aggregated catalog and 2) providing a buyer with



access to the aggregated catalog and separate access to at least one of the plurality of supplier catalogs on the commerce site.

Turning to the Appellants' first argument, the Appellants argue that Haynes does not describe "(i) a plurality of supplier catalogs; (ii) receiving the plurality of supplier catalogs; (iii) a plurality of suppliers; (iv) aggregating the plurality of supplier catalogs; and (v) an aggregated catalog." App. Br. 10.

Contrary to the Appellants' argument, we find that Haynes expressly describes: (i) a plurality of supplier catalogs; (ii) receiving the plurality of supplier catalogs and (iii) a plurality of suppliers. We note that Haynes states:

In operation, the catalogue of each of the suppliers may be stored in a memory or database of its terminal 14. Though not shown in FIG. 1, the external system 28 may be coupled to a terminal 14 of a selected supplier, whereby its catalogue of products and/or services may be downloaded to the system 10 an, in particular, applied to the server 46, which in turn transmits such data via the database server 34 to the data warehouse 36, where the product and/or services catalogue of the suppliers are stored.

Haynes [0056]. *See also* FF 5 (catalogues for each supplier are also described through out Haynes).

We also find that Haynes expressly describes: (iv) aggregating the plurality of catalogs and (v) and an aggregated catalog. We agree with the Examiner that the step of aggregating said plurality of supplier catalogs into an aggregated catalog reads on Haynes description of downloading the supplier's catalogs to store the catalogs in data warehouse 36. *See* Answer 10. As to the Appellants' argument that aggregating requires some sort of

transformation of the data, we find no such requirement. Reply Br. 6-7 (“The step of aggregating is a step that *transforms* the entities (i.e. supplier catalogs) in a single aggregated catalog via the technique of aggregation.”). We find that aggregating, when given the broadest reasonable meaning in light of the Specification (*see* FF 1), requires nothing more than collecting the supplier’s catalogs into a whole (*see* FF 2). Further, we find that an “aggregated catalog”, when given the broadest reasonable meaning in light of the Specification, encompasses a catalog which is formed by a collection of catalogs (*see* FF 3). Given this, we find that the step of aggregating said plurality of supplier catalogs into an aggregated catalog reads on Hayne’s database, which is specifically described as storing a collection of supplier catalogs (*see* FF 5-6).

Turning to the Appellants’ second argument, the Appellants argue that Haynes does not describe that “a user is able to access a supplier catalog, which is separate from the aggregated catalog.” App. Br. 15. However, claim 1 does not require that the supplier catalog is separate from the aggregated catalog as the Appellants seem to argue (*Id.*) Claim 1 states “providing a buyer with access to said aggregated catalog and *separate access* to at least one of said plurality of supplier catalogs on said commerce site.” (Emphasis added.) It is the “access” that is separate and not the catalogs. “Many of appellant’s arguments fail from the outset because, . . . they are not based on limitations appearing in the claims . . . .” *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982).

Accordingly, we find that the Appellants have not overcome the rejection of claims 1, 7, 12, 13, 18 and 19 under 35 U.S.C. § 102(e) as being anticipated by Haynes.

*Claims 2, 8, and 14*

Claim 2 recites “providing a supplier hub catalog topology” and “wherein said step of aggregating includes aggregating said supplier catalog according to said supplier hub catalog topology.” The Appellants argue that Figure 1 and paragraph [0089] of Haynes, which were cited by the Examiner, does not describe these steps. App. Br. 15-16 and Reply Br. 7. The Examiner does not specifically respond to these arguments, but merely refers to the arguments made with regards to claim 1. *See Answer 11.*

Figure 1 is a diagram of the arrangement of servers and databases of the system in Haynes. FF 7. Paragraph [0089] describes a supplier assigning a category or relationship to an item, which can then be searched for in the catalog by the category or relationship. FF 8. We fail to see how this describes the aggregating said supplier catalog according to said supplier hub catalog topology and the Examiner provides no explanation.

We note that claims 8 and 14 recite similar limitations, and our reasoning above applied equally to the rejection of those claims. Accordingly, we find that the Appellants have overcome the rejection of claims 2, 8, and 14 under 35 U.S.C. § 102(e) as being anticipated by Haynes.

*Claims 3, 9, and 15*

Claim 3 recites “said buyer accesses said aggregated catalog through one of said hosted supplier stores owned by one of said suppliers.” The Appellants argue that paragraph [0048] of Haynes, which was cited by the Examiner, does not teach this limitation. App. Br. 16-17 and Reply Br. 8. In the rejection, the Examiner cites paragraph [0048] of Haynes and states

that a buyer accessing the catalog through a vendor site is disclosed.

Answer 5. *See also* Answer 11. However, paragraph [0048] describes a buyer accessing buyer site 22*a* provided by a web server 20 of the system 100. FF 9. We note that paragraph [0049] describes a vendor accessing system 100 via the vendor site 22*b*. FF 10.

Claims 9 and 15 recite similar limitations, and our reasoning above applied equally to the rejection of those claims. Accordingly, we find that the Appellants have overcome the rejection of claims 3, 9, and 15 under 35 U.S.C. § 102(e) as being anticipated by Haynes.

*Claim 6*

Claim 6 recites “developing requests for quotations for made-to-order items.” The Appellants argue that paragraphs [0058] and [0059] of Haynes, which the Examiner cited, does not describe this feature. App. Br. 17-18 and Reply Br. 9.

We find that Haynes describes this step. Paragraph [0059] of Haynes states “If the buyer hits a “Request for Proposal” button 223*d*, the buyer causes a message describing a particular product to be transmitted to selected suppliers with a request for bid from each of those designated suppliers for the particular product.” FF 11. Haynes also describes that the products can be customized with select trademarks or logos. FF 12.

Accordingly, we find that the Appellants have not overcome the rejection of claim 6 under 35 U.S.C. § 102(e) as being anticipated by Haynes.

Appeal 2009-012763  
Application 10/751,742

*The rejection of claims 4-5, 10, 11, 16, 17, and 20 under 35 U.S.C. §103(a) as being unpatentable over Haynes and Flaxer.*

We also shall sustain the standing 35 U.S.C. § 103(a) rejection of dependent claims 4-5, 10, 11, 16, 17, and 20 as being unpatentable over Haynes and Flaxer since the Appellants have not challenged such with any reasonable specificity (*see* App. Br. 18), thereby allowing claims 4-5, 10, 11, 16, 17, and 20 to stand or fall with parent claims 1, 7, 13, and 19 (*see In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987)).

#### DECISION

The decision of the Examiner to reject claims 1, 4-7, 10-13, and 16-20 is affirmed and to reject claims 2, 3, 8, 9, 14 and 15 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

#### AFFIRMED-IN-PART

mev

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